IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2947 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL LALLUBHAI CHIMANBHAI

Versus

GOVT. OF GUJARAT

Appearance:

1. Special Civil Application No. 2947 of 1991

MR ND GOHIL for Petitioner No. 1

MR MR SHAH for Respondent

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 13/02/2002

ORAL JUDGEMENT

1. Patel Lallubhai Chimanbhai, petitioner has filed this petition for a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus quashing and setting aside the order

No.3/89/449/V dated 30.1.189, letter No.13902775(PPO) dated 13.3.89 and Government of India, Ministry of Defence Letter No.7(956)/89/D dated 28.2.90 and also letter No.R/13902775/D dated 20.11.90 whereby the petitioner's claim for disability pension has been rejected. The petitioner further prayed that this Court may direct the respondent authorities to pay forthwith the legitimate disability pension holding that the disability has occurred owing to disease developed during the military service and further be pleased to grant all incidental and consequential reliefs in this behalf.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner joined army in the Medical Corps as Nurshing Assistant on 21.7.1964 after undergoing all formalities. After completion of training at Lucknow and Bangalore the petitioner was posted to Command Hospital Calcutta and thereafter petitioner served to various Military Organisation from 1966 to 1988 i.e. Pune, Shillong, NEFA, Baroda, Kamptee, Ahmedabad, Nagaland, Jullender, Ambala, Jhansi, Surat and Bhuj.

2.2 It is the contention of the petitioner that in the defence services it is a prevalent practice that a soldier has to undergo every year periodical medical check up. He submitted that whenever there were such periodical medical check up, the petitioner was found medically fit in all respect.

2.3 In 1988 the petitioner posted to Military Hospital Bhuj after completion of JCO's course from A.M.C. Centre and School Lucknow. The petitioner proceeded on 20 days casual leave from 10.4.88 and rejoined the duty on 30.4.88 at Military Hospital Bhuj. Thereafter petitioner fell sick and was admitted to Military Hospital Bhuj on 3.5.88 for treatment and subsequently he was transferred to Military Hospital Ahmedabad on 1.6.88 for further treatment till 25.6.88 and thereafter he was transferred to Military Hospital Bhuj.

2.4 It was a case of the petitioner that after coming back to Military Hospital Bhuj he medical board has conducted for assessment of medcial disability and the petitioner was put on medical category on 5.7.88 and also recommended 60% disability for the disease which occured during service period. The petitioner suffered Ischaemic Heart Disease with conjective Cardiac Failure Pneumonitis Lower Left Zone. Thereafter the petitioner reported to

A.M.C. Record Office Lucknow (U.P.) for pension purpose on 7.7.88. Thereafter the petitioner was discharged from the service on 31.7.88 after completion of 24 years of defence service. The Medical Board advised the petitioner to continue further treatment at nearest Military Hospital and the same is continued till today.

2.5 It was a further case of the petitioner that though the petitioner was recommended 60% disability pension by the Military Board conducted by the Military Hospital Bhuj and the petitioner's case for disability medical pension was forwaded to C.D.A.(P) Allahabad. The respondent No.2 by letter dated 13th March 1989 informed the petitioner that the petitioner's disability pension claim has been rejected by C.D.A.(P) Allahabad vide letter dated 30.1.1989 on the ground that the disability from which petitioner suffering during service in the Army and on which petitioner's claim is based on (a) is not attributable to military service and (b) does not fulfil the following conditions namely that is existed before or arose during the Military service and has been or remains aggravated thereby.

2.6 Being aggrieved and dissatisfied with the aforesaid communication dated 13.3.89 the petitioner preferred appeal to Ministry of Defence, Government of India, New Delhi on 23.5.89. Thereafter the petitioner's appeal dated 23.5.89 was forwarded to Ministry of Defence and C.D.A.(P) Allahabad by respondent No.1 letter dated 29.9.89. The respondent No.2 by letter dated 20.11.90 informed the petitioner that the petitioner's disability pension appeal rejected by the Ministry of Defence.

2.7 It was a further case of the petitioner that petitioner is eligible and entitle to get disability medical pension as per the Guide to Resettlement of Ex-Servicemen 1984 published by the Ministry of Defence, Directorate General Resettlement as per the Chapter IV Retirement Benefits. The same has been annexed at Annexure `E' to the petition.

2.8 Being aggrieved and dissatisfied with the aforesaid action, the petitioner has filed the present petition before this Court somewhere in April, 1991. This Court issued notice on 24th April, 1991, and thereafter same was admitted on 5th August, 1993, and directed that the matter to be heard in the month of February, 1993.

2.9 During the pendency of the petition the petitioner has also filed further affidavit dated

15.1.2002 and stated that he has undergone Engio Plastic Heart Surgery at U.N.Mehta Institute of Cardiology and Research Centre, Civil Hospital, Ahmedabad on 4.3.2000 and he has spent about Rs.80,000/-. The copy of the report from U.N.Mehta Institute of Cardiology and Research Centre which shows that petitioner has a heart disease and he has also Coronary artery bypass surgery. The said report and receipt of Rs.80,000/- is also annexed with the said affidavit.

2.9(A) Learned advocate for the petitioner has also relied upon the certificate dated 9th January, 2002, issued by Dr.Narendra G.Shah in which it has been stated that petitioner is suffering from Diabetes Mellitus with hypertension with ischaemic heart disease with heart failure and he is under care since long period though he is taking regular treatment but in spite of aggressive treatment his condition is deteriorating.

2.10 The petitioner has also relied upon the Guide to Medical Officer (Military Pensions) Rules 1980 where Rule 9 diseases has been defined. In respect of disease, the following rule will be observed particularly clause (b), (c) and (d) which reads as follows:

"Clause(b):- A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

Clause(c):- If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

Clause(d):- In considering whether a particular disease is due to military service, it is necessary to relate the established facts in the aetiology of the disease, and of its normal development, to the effect that conditions of service, e.g. exposure, stress, climate etc. may have had on its manifestation or aggravation. Regard must also be had to the time factor."

2.11 In view of the aforesaid evidence and in view of the aforesaid clauses, learned advocate for the petitioner submitted that the findings of the authority that the present disease is not attributable to military service and same does not fulfil the conditions namely that is existed before or arose during military service and has been or remains aggravated thereby are the findings which are contrary to and in consistent with the record of the case. He submitted that the disease of hyper tension cannot be come into existence immediately. According to him, because of hard work, exposure, stress and stain, climate for which he has worked military service has computed the said disease and, therefore, the findings of the authority are perverse and the same is required to be quashed and set aside.

3. In view of these aforesaid contentions of the petitioner, on behalf of the respondent one Shri Major Fiaz Ahmed Sattar, Offcg. Registrar Military Hospital Ahmedabad has also filed affidavit dated 25th July, 1991. He has relied upon the report of the Medical Board dated 6th July, 1988 in this behalf. The said report of Military Hospital, Bhuj, clearly shows that the disease for which the petitioner is placed in permanent low medical category and are not attributable or aggravated by military service.

3.1 In his affidavit he has also stated that the Medical Board has assessed the petitioner's disability as 60% but at the same time the said medical board opined that the disease was constitutional in nature and set on when the individual was on casual leave from 10.4.88 to 29.4.88 and it neither attributable nor aggravated by the service conditions. It was further reiterated that the disease for which the petitioner was placed in low medical category and is discharged from service is not attributable or aggravated due to military service and, therefore, under Regulation 173 of the Pension Regulations for Army, the petitioner is only entitled to normal pension and not to disability pension as claimed by him.

4. I have considered the submissions made by the learned advocate for the petitioner as well as learned counsel for the Union of India. I have also considered the contention of the petitioner contained in the petition as well as affidavit-in-rejoinder and also affidavit-in-reply filed by Union of India.

4.1 In my view, normally the affidavit in reply filed

by the Government based on the medical report may be accepted by this court. However, in this case the petitioner has filed rejoinder dated 15.1.2002 and along with the said report the petitioner has enclosed report of U.N. Mehta Institute of Cardiology and Research Centre, Civil Hospital Campus, Ahmedabad regarding cardiac catheterization and angiography and also certificate issued by U.N. Mehta Institute of Cardiology and Research Centre dated 4.3.2000 stating that the petitioner was admitted to the institute from 3.3.2000 to 4.3.2000 and he had undergone operation of PTCA (Angioplasty) pm 3/3/2000 and was adivsed to take rest for a period of one month from 4.3.2000 and necessary another certificate dated 4.3.2000 was also produced which shows that the petitioner had taken treatment of angioplasty. He has also relied on a guide to Medical Officers (Military Pensions), 1980 particularly para 9(b), (c) and (d). In view of the peculiar facts and circumstances of the case, I am of the view that the contention raised by the petitioner requires to be accepted because of the subsequent reports from U.N. Mehta Institute of Cardiology and Research Centre, Civil Hospital Campus, Ahmedabad which is filed along with the affidavit-in-rejoinder. Therefore, the prayer made by the petition in the petition is to be allowed. In view of the same the petitioner is entitled to disability pension which he has asked in this behalf. The disability pension be granted by 31.8.2002.

5. In view of the aforesaid the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

(K.M. Mehta, J.)

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